
IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1852.

Mr. RUSK, from the Committee on the Post Office and Post Roads, reported the following bill; which was read, and passed to a second reading.

JANUARY 13, 1853.

Ordered to be printed.

A BILL

To set apart and sell a portion of the public lands for the construction of certain railroads to the Pacific Ocean.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled, That*
3 Asa Whitney, of the city of New York, and his assigns, are
4 hereby authorized to construct a railroad, from any point he
5 or they may designate, upon Lake Michigan or the Mississippi
6 river, at his or their option, through the public lands belong-
7 ing to and under the jurisdiction of the United States, on a
8 line as nearly straight as the face of the country will admit,
9 and where the streams can be bridged, to some point on the
10 Pacific ocean, where a suitable harbor may be had, under the
11 conditions hereinafter specified and stipulated by this act.

1 SEC. 2. *And be it further enacted, That all lands be-*
2 longing to or claimed by the United States, for thirty miles

3 wide, or five full townships of six miles each, on each side of
4 the line of the said road, and for any and all of what may
5 have been sold before this act takes effect, an equivalent num-
6 ber of acres of other government lands to make the full quan-
7 tity of thirty miles on each side of said road, is hereby set
8 apart and sold to the said Whitney, his heirs and assigns, for
9 the consideration of ten cents per acre, to be paid to the Uni-
10 ted States, and which sale is subject to the conditions herein-
11 after declared, and for the purpose of enabling said Whitney
12 and his assigns, from the sale and settlement of said lands, to
13 construct a railroad from either of the points aforesaid to the
14 Pacific ocean. And so soon as said Whitney shall have located,
15 fixed upon, and surveyed the route for one hundred miles or
16 more of said road, then all the lands for thirty miles wide on
17 each side of said line so designated shall be, and are hereby,
18 set apart and held for the special purposes of this act, and sub-
19 ject to the requirements and conditions thereof. And so soon
20 as said Whitney shall have located and surveyed one hundred
21 miles or more of the line of said road, he shall be entitled to
22 select a quantity of the public land, in the same State or Ter-
23 ritory, equal to the quantity which may have been sold within
24 the said limits of thirty miles on each side of said line, if so
25 much vacant land can be found in said State or Territory ; if
26 not, then to be selected in any other State or Territory :
27 *Provided*, No lands now reserved for mineral or other pur-

28 poses, or gold-bearing lands, shall be subject to entry by him
 29 for such equivalent under any grant contained in this bill ; and,
 30 on his notifying the Commissioner of the General Land Office
 31 of such selection, the same shall be withdrawn from sale, and
 32 remain set apart for the object and purposes of this act, in the
 33 same manner as the lands lying within the said limits of thirty
 34 miles on each side of said line. And from time to time, as
 35 the said Whitney shall locate and establish portions of the line
 36 of said road, the lands adjoining, to the extent of thirty miles
 37 on each side thereof, shall be withheld from sale, and also such
 38 lands as he may select as an equivalent for the lands which
 39 may have been sold or otherwise disposed of within the said
 40 limits of thirty miles each side of said line.

1 SEC. 3. *And be it further enacted,* That, in locating said
 2 route, two hundred feet in width for the entire length of the
 3 road shall be appropriated expressly for said road, its stations,
 4 buildings, workshops, turnouts, &c., necessary for its complete
 5 operation, and shall be forever reserved for the especial pur-
 6 poses herein named, and shall not be transferable or subject to
 7 sale by the said Whitney, his heirs and assigns, for any other
 8 purpose.

1 SEC. 4. *And be it further enacted,* That no part of the
 2 lands embraced by the provisions of this act shall be applied
 3 under its authority, and for the objects specified in the same,
 4 except under the following terms and conditions, to wit : said

5 Whitney shall first survey, fix upon, and locate the route for
6 said road to a suitable bridging place on the Mississippi, if the
7 road commence on or near Lake Michigan, or, if commencing
8 at another point, to such distance as shall be necessary to se-
9 cure the land for the purpose aforesaid. He shall also com-
10 mence the work with machinery, preparations, and arrange-
11 ments for its continuance, and complete twelve miles of road,
12 according to the best plan of construction of railroads in the
13 United States at the present day, with a single track, on a gauge
14 or width of not less than six feet, and with an iron rail of not
15 less than sixty-four (64) pounds to the yard, at his own ex-
16 pense, and to the satisfaction of the commissioner hereinafter
17 directed to be appointed, to be charged with the interests of
18 the United States, who shall certify to the Commissioner of the
19 General Land Office that said road has been substantially made
20 and constructed, and is in all respects in conformity to the re-
21 quirements of this act, and that said road is progressing; and
22 thereupon said Whitney, and his assigns, shall be entitled and
23 fully authorized to sell, at public or private sale, the first six
24 miles of the breadth of said land so set apart for the construc-
25 tion of said road, and one-half part of the equivalent lands
26 selected in lieu of what may have been sold; and the Commis-
27 sioner of the General Land Office shall cause patents to be
28 issued the same as for lands sold by the government; said
29 patents to be delivered to the said Whitney, for the purchasers

30 under contracts by and with him; and the title shall be the
31 same as if they had purchased directly from and paid to the
32 government for the lands: *Provided always*, That if the six
33 miles by sixty, the two hundred and thirty thousand four hun-
34 dred acres, shall, together, sell so as to net an average price
35 per acre of seventy-two cents, and together amount to a sum
36 exceeding the actual outlay for the ten miles of road so com-
37 pleted, with the necessary bridges and machinery for its suc-
38 cessful operation, then that excess, if any, shall be paid into
39 the treasury of the United States and held as a fund to continue
40 and complete the road beyond the good lands and to the Pacific.
41 The other half, or six miles by thirty wide on each side of said
42 road, with the equivalent as before named, shall be held by the
43 government as a fund, to be applied to the construction of said
44 road through poor or unavailable lands, inadequate to that pur-
45 pose, and subject to sale only as hereinafter declared. And the
46 road, with all its machinery, shall also be held as a security
47 that the work will be continued. And in like manner, for eight
48 hundred miles of said route, or so far beyond as the one-half
49 or alternate six miles breadth of land so set apart, with the
50 equivalent for lands sold, shall be found of sufficient value to
51 pay for the construction of said road, said Whitney shall pro-
52 ceed, in manner aforesaid, being authorized to dispose of six
53 miles of said breadth of land whenever he may have con-
54 structed twelve miles of the said road. But when the outlay for

55 any twelve miles of said road, beyond the eight hundred miles
 56 of good lands, shall be found to exceed the sum for which the
 57 whole land, of thirty miles on each side thereof, is or can be
 58 sold for, and this fact being certified by said commissioner to
 59 the General Land Office, then the said Whitney shall be, and
 60 is hereby, authorized to demand a sale of the reserved lands,
 61 or such part thereof as may be necessary to supply the de-
 62 ficiency; which sale shall take place as hereinafter declared,
 63 and the said Whitney shall receive, direct from the proceeds of
 64 such sale, sufficient to reimburse his actual outlay, and the bal-
 65 ance, if any, after deducting the expenses of said sale, shall be
 66 paid into the treasury by said commissioner, as hereinafter de-
 67 clared.

1 SEC. 5. *And be it further enacted,* That the one-half or
 2 alternate six miles by thirty miles wide, of good lands, which
 3 is by this act held to create a fund to aid in the construction
 4 of the road through the unavailable lands as aforesaid, shall be
 5 sold only as is actually demanded by this act, for and with the
 6 progress of the road, or as the said lands may be demanded for
 7 actual settlement; which shall be decided upon by the said
 8 commissioner hereinafter named, by and with the advice and
 9 consent of the said Whitney; and said sale shall be at public
 10 auction, to the highest bidder, and in lots not exceeding forty
 11 to one hundred and sixty acres, (160,) and, under the direc-
 12 tion of said commissioner, said sale shall take place at the town

13 or settlement nearest to the land to be sold; and said commis-
 14 sioner shall cause at least six months' notice to be given before
 15 said sale, in the two principal newspapers published at the city
 16 of Washington; the expenses thereof, as also that attending
 17 the sale, shall be paid from the proceeds of said sale; which
 18 sale shall be for cash only, twenty (20) per cent. of which to
 19 be paid at the day of sale, and the balance on delivery of the
 20 patents, thirty days after. Any or all purchasers neglecting to
 21 pay the balance on the day named for the delivery of the
 22 patents, shall forfeit the twenty per cent., and the sale shall be
 23 void; and the proceeds of any and all such sales, after deduct-
 24 ing all necessary expenses, shall be paid into and held in the
 25 treasury of the United States, to be drawn for by the said
 26 Whitney as the money may be wanted to continue and com-
 27 plete said road, but never except under the certificate from
 28 said commissioner that this act has been fully complied with,
 29 and that there is a deficiency of means from the lands on the
 30 line of said road; and said fund shall be held in the treasury
 31 only as in trust for this work, and in no way considered as be-
 32 longing to the treasury of the United States, while this work
 33 is being carried out, and subject only to this act.

1 SEC. 6. *And be it further enacted,* That should any of
 2 the lands named in the fourth section of this act, which the
 3 said Whitney is authorized by said fourth section to sell for
 4 his own use and benefit, remain unsold for ten years after said

5 road shall have been completed through them, then all and any
6 of said lands shall be sold at public auction, in the same man-
7 ner as is specified in the fifth section of this act; but the pro-
8 ceeds of all such sales, after deducting the necessary expenses,
9 shall belong to and be the property of the said Whitney, his
10 heirs and assigns, and the Commissioner of the General Land
11 Office shall cause patents to issue, as before described in sec-
12 tion four of this act, and they shall be given to the said Whit-
13 ney, and from him to the actual purchasers, which shall be
14 their full and complete title from the government.

1 SEC. 7. *And be it further enacted*, That until patents
2 shall have issued from the General Land Office, no titles from
3 or contracts made by the said Whitney shall be considered as
4 binding on the government, and all the lands remaining un-
5 patented shall be exempted from taxation, as though they be-
6 longed to the government absolutely.

1 SEC. 8. *And be it further enacted*, That the said Whit-
2 ney, and his assigns, shall keep said road in repair and opera-
3 tion, with turn-outs, building, and machinery necessary to ac-
4 commodate the trade and travel on the line to the ocean and
5 to the eastern terminus, and shall not charge tolls, either for
6 passengers or freight, while the road is being built, exceeding
7 what is then charged by the principal railroads of the United
8 States, to be established and regulated by Congress. And the
9 United States mails shall be furnished transportation free of

10 charge to the government, but not including mailable matter
11 to and from foreign countries, and also all United States troops
12 and munitions of war.

1 SEC. 9. *And be it further enacted,* That after the com-
2 pletion of the whole of said road, from its eastern terminus to
3 the Pacific ocean, the lands set apart by this act for that pur-
4 pose, which then remain unsold, shall be, and are hereby
5 pledged and held as a fund for operating and keeping in repair
6 said road for the period of ten years, unless it shall be found,
7 previous to such period, that the tolls are sufficient for those
8 purposes; and at the expiration of said ten years, or previ-
9 ously, if the commissioner shall certify that the tolls are suffi-
10 cient to operate said road and keep it in repair, and the same
11 shall be approved by Congress, then such lands remaining un-
12 sold shall belong to said Whitney, his heirs or assigns, and
13 shall be disposed of at public or private sale for his or
14 their benefit, the titles to be secured by patents as is hereinbe-
15 fore provided. And when said road shall be completed as
16 aforesaid, all moneys which may be in the treasury for lands
17 sold under the authority of this act, together with said road,
18 the buildings pertaining thereto, and the machinery necessary
19 for its successful operation, shall belong to and be vested in
20 said Whitney, and his heirs and assigns, but, with the excep-
21 tion of the moneys, all subject to the rights of the United

22 States and the control and regulation of Congress hereinafter
23 reserved ; the moneys to be paid over to said Whitney, or
24 his assigns, on the certificate of the commissioner that said
25 road has been completed in conformity to the requirements of
26 this act. But said road, buildings, and machinery, shall stand
27 pledged as security for the payment to the United States for
28 the lands sold by this act.

1 *SEC. 10. And be it further enacted,* That, after said
2 road shall be completed, the Congress of the United States
3 shall have power to establish and regulate its tolls or charges
4 for freight and passengers forever after ; and it being intended
5 that this road shall be a free, public highway, as far as practi-
6 cable, for the equal and common benefit of all the people of
7 the United States, the rates of said tolls shall be such as to
8 yield a revenue merely sufficient to keep said road in repair,
9 and defray the necessary expenses of its operation, superin-
10 tendence, and other charges, including the sum of four thou-
11 sand dollars per annum, to be allowed to said Whitney and his
12 assigns for the care and superintendence of said road. And
13 said Whitney and his assigns shall keep an account of the re-
14 ceipts or proceeds from the sale of all the lands set apart by
15 this act for the purposes herein named, and also of the ex-
16 penditures for the construction of said road, including the
17 repairs whilst said work is being completed ; and if it shall
18 appear that the outlay has exceeded the receipts, which fact

19 shall be certified by said commissioner to the Secretary of the
20 Treasury, and by him communicated to Congress, then such
21 additional rates of tolls may be imposed and collected, as may
22 be found necessary to reimburse the said Whitney and his
23 assigns for such deficiency. And should the business of the
24 road require more than one track, then the said Whitney and
25 his assigns are hereby authorized to construct one or more ad-
26 ditional tracks at his or their expense, and with the consent of
27 the States through which said road may pass ; and are hereby
28 authorized to charge tolls, both for freight and passengers,
29 sufficient for the expenses of operation, &c., as also for a re-
30 ward or return for the cost or outlay for such construction,
31 which, as being connected with the first track, shall together
32 be regulated and fixed by Congress :. *Provided*, That if, after
33 the completion of the road, the said Whitney or his assigns
34 shall neglect and fail to take reasonable and proper care and
35 supervision of said road, its repairs, operations, and business,
36 to the detriment of the public convenience and interest, such
37 neglect and failure to be judged of and decided by Congress,
38 it shall, in such case, be lawful for Congress to impose a penal-
39 ty for such neglect, or adopt such other measures as may be
40 necessary to insure proper care and attention to said road, and
41 the use thereof ; and if such measures as may be adopted to
42 correct the evil shall not be effectual, Congress may then pro-
43 vide for the appointment of some other person or persons, for

44 the general oversight and superintendence of said road, its
45 repairs and operations.

1 SEC. 11. *And be it further enacted*, That the said Whit-
2 ney and his assigns may, from time to time, enter into such
3 contracts and arrangement with any State through which said
4 road may pass, for authority to build and operate said road, or
5 any part thereof, through said State, or for any other matter of
6 interest claimed under the rights and jurisdiction of any State
7 through which said road may pass.

1 SEC. 12. *And be it further enacted*, That all of that part
2 of the route for said road which is not within a State, but ter-
3 ritory of, and under the jurisdiction of the United States, the
4 said road, its machinery, and appurtenances, shall be exempt
5 from taxation forever.

1 SEC. 13. *And be it further enacted*, That the President
2 of the United States, by and with the consent of the Senate,
3 shall appoint a commissioner, whose duty it shall be to super-
4 intend the interests of the United States in carrying out the
5 objects of this act: he shall see that the road is promptly and
6 properly constructed; that no waste is committed upon the un-
7 sold lands; and that the objects and intentions of this act are
8 fairly and properly carried out. That when the said Whitney
9 shall have, from time to time, completed the twelve miles sec-
10 tion of road, as hereinbefore specified by this act, "according
11 to the best plan of construction for a railroad at the present

12 day in the United States, on a gauge of not less than six feet,
13 and with an iron rail of not less than sixty-four (64) pounds to
14 the yard," then it shall be the duty of said commissioner, and
15 he is hereby authorized, to grant his certificate of satisfaction
16 to the said Whitney that this act has been complied with. But
17 should a disagreement arise between the said commissioner and
18 the said Whitney, relative to the manner of the construction of
19 said road, or any part thereof, such disagreement shall be re-
20 ferred to two competent engineers, chosen one by each party;
21 and after examining the work, their opinion or decision, in
22 writing, shall be final and binding on said Whitney and the
23 said commissioner, who is hereby authorized to act and be
24 governed by the same; but in a case or point where the two
25 engineers selected cannot agree, then they shall select the third,
26 and the opinion or decision, in writing, of the majority, shall
27 govern and be final, and the said commissioner and said
28 Whitney shall so act. And in like manner for all and every
29 disagreement which may arise under this act, relative to the
30 construction of said road, the materials, the machinery, its
31 operation, and all other matters. It shall also be the duty of said
32 commissioner to superintend, and cause due notice to be given
33 of all sales of the lands named in this act, as hereinbefore
34 specified in different sections, relating to sales at public auc-
35 tion; and it shall be his duty to report all such sales to the
36 General Land Office, but he shall not have power to receive

37 any payment for any lands sold. And it shall be the duty of
38 the said commissioner to report fully to each session of Con-
39 gress as to the manner in which this act is being carried out,
40 and furnish said Whitney with a copy of said report. Said
41 commissioner shall be paid a salary not exceeding
42 per annum, to be paid out of the proceeds of lands sold under
43 this act. The referees before named in this section of this
44 act shall be paid dollars per day, each, for the time
45 actually occupied in and by the reference, and shall also be paid
46 out of the proceeds of lands sold under this act.

1 SEC. 14. *And be it further enacted,* That all sales at
2 public auction of that portion of the lands under this act, as
3 described and declared in section fifth of this act, shall be
4 made under the direction of said commissioner, as declared in
5 said fifth section, together with the register for the district
6 nearest to where said lands are located. Said sale or sales to
7 take place in the same manner as all sales at public auction of
8 government lands, but for terms of payment as specified in section
9 fifth of this act; and the payment for all such sales, except as
10 specified in sections fourth and sixth of this act, shall be made to
11 the receiver of public moneys for the United States in the dis-
12 trict nearest to the place of sale; and said receiver shall be
13 responsible for and account to the treasury of the United
14 States for all such moneys so received, the same as for all
15 moneys belonging to the United States; but he shall keep a

16 separate and distinct account of all such moneys, and his certi-
 17 ficate or receipt in duplicate shall be given to both the said
 18 Whitney and the Commissioner of the General Land Office,
 19 the same as in case of sales of public lands.

1 SEC. 15. *And be it further enacted*, That the Secretary
 2 of the Treasury shall cause all moneys or funds received under
 3 this act to be kept safely in the treasury of the United States,
 4 for the especial purposes of this act, as hereinbefore declared,
 5 and separately and distinctly from all moneys or funds belong-
 6 ing to the United States; that he shall report to each session
 7 of Congress an accurate account of all moneys or funds re-
 8 ceived into, and all which may have been paid out of the
 9 treasury under, as also the amount in the treasury subject to,
 10 this act. And he is hereby authorized to pay to the said
 11 Whitney, from any funds or moneys subject to this act, from
 12 time to time, any sum or sums which may be authorized by
 13 the certificate from said commissioner that this act has been
 14 complied with as hereinbefore declared.

1 SEC. 16. *And be it further enacted*, That the said Whit-
 2 ney is hereby permitted, if found necessary for the construc-
 3 tion of said road, and purposes connected with it, to cut tim-
 4 ber, get stone, fuel, and other materials, from any unsold
 5 government lands convenient to said road.

1 SEC. 17. *And be it further enacted*, That if said Whit-
 2 ney and his assigns shall not, within two years from the passage

3 of this act, locate and survey at least two hundred miles of said
4 road from its eastern terminus, and have commenced the work
5 and completed at least twelve miles of the road, it shall be
6 lawful for Congress, and such right is hereby reserved, to re-
7 peal this act ; and all rights and privileges conferred on said
8 Whitney, his heirs and assigns, shall be forfeited and cease.
9 And if, after having commenced and constructed a part of said
10 road, said Whitney and his assigns shall, without good and
11 sufficient reasons, neglect to prosecute said work, and progress
12 with the construction of said road, for the period of twelve months,
13 Congress reserves the right to revoke all the rights and privi-
14 leges conferred by this act on said Whitney and his assigns,
15 and to transfer the same to some other person or persons, for
16 carrying out and accomplishing the object contemplated by this
17 act. But in such case, said Whitney and his assigns shall pos-
18 sess and hold such part of the lands set apart for the construc-
19 tion of this road, or the avails thereof, if sold, as the length of
20 the road constructed may entitle him or them to, according to
21 the provisions of this act, and the route for said road shall be
22 located and surveyed from its eastern terminus to the Pacific
23 ocean, and the road constructed and completed one-third of the
24 whole extent within nine years from the passage of this act ;
25 and one other third shall be made and completed within six
26 years thereafter, and the entire road shall be finished and in a
27 condition for use within twenty-five years from the passage of

28 this act; and on failure of said Whitney and his assigns to
 29 complete any of the sections of the said road within the period
 30 specified, without good and sufficient reasons for such neglect,
 31 to be judged of by Congress, the same right is reserved to
 32 Congress to revoke the right and privileges conferred on them,
 33 and do with the same as they may deem best, the said Whit-
 34 ney and his assigns retaining such part of the lands, or the
 35 avails thereof, as they may be justly entitled to from the extent
 36 of the road constructed, according to the provisions and re-
 37 quirements of this act; and Congress further reserves the right
 38 and power, at any time, to alter or amend this act, as the pub-
 39 lic interest may require, so far as it can be done without im-
 40 pairing the rights and privileges of said Whitney and his
 41 assigns.

1 SEC. 18. *And be it further enacted,* That should any
 2 part of the route for said road run through a section of coun-
 3 try where the Indian titles have not been extinguished, the
 4 government shall extinguish such titles so fast as the road shall
 5 progress. And the government shall, so fast as the route or
 6 any part or parts thereof shall have been located, cause all the
 7 lands on its line embraced in this bill to be surveyed and made
 8 ready for sale, as in all cases of the surveying of the govern-
 9 ment lands.

1 SEC. 19. *And be it further enacted,* That sixty (60)
2 miles in width of the public domain, with an equivalent number
3 of acres for all which may have been sold or otherwise disposed
4 of out of the same, is also hereby set apart and sold to
5 jointly, to them, their heirs and assigns, to enable them to con-
6 struct a railroad from a point on the west bank of the Missis-
7 sippi river, not north of the neighborhood of Memphis, in
8 Tennessee, to run thence to the Rio del Norte and to the Pa-
9 cific ocean, to San Diego and San Francisco, or to a suitable
10 harbor for commerce, on the same terms and conditions as for
11 the sixty miles in width of the public domain which is herein-
12 before by this act set apart and sold to Asa Whitney, to enable
13 him to construct a railroad from Lake Michigan or the Mis-
14 sissippi river to the Pacific ocean, on precisely the same terms
15 and conditions in all particulars as is specified in all the fore-
16 going sections of this act, for and to the said Whitney, as well
17 in the sale and price of the lands set apart, as in the building
18 and operating the said railroad, and all and every particular, in
19 any and every way relating thereto.